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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 140113030-4109-01]

RIN 0648-XD081

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Adjustment of Georges Bank and Southern New England/Mid-Atlantic Yellowtail Flounder Annual Catch Limits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; adjustment of annual catch limits.

SUMMARY: NMFS announces a transfer of unused quota for the remainder of the 2013 fishing year (FY) of Georges Bank (GB) and Southern New England/Mid Atlantic (SNE/MA) yellowtail flounder from the Atlantic scallop fishery to the Northeast (NE) multispecies fishery. This action is being taken because the scallop fishery is not expected to catch its entire allocation of GB and SNE/MA yellowtail flounder. The intent is to provide additional harvest opportunity to the NE multispecies fishery while ensuring sufficient amounts of GB and SNE/MA yellowtail flounder are available for the scallop fishery.

DATES: Effective [Insert date of filing for public inspection at the Office of the Federal Register], through April 30, 2014.

FOR FURTHER INFORMATION CONTACT: Liz Sullivan, Fisheries Management Specialist, (978) 282-8493.

SUPPLEMENTARY INFORMATION:

Background

NMFS regulations at 50 CFR 648.90(a)(4)(iii)(C) authorize the Regional Administrator (RA) to reduce the scallop fishery sub-ACL to the amount projected to be caught, and increase the groundfish fishery sub-ACL up to the amount reduced from the scallop fishery if, by January 15 of each year, the scallop fishery is expected to catch less than 90 percent of its GB or SNE/MA yellowtail flounder sub-annual catch limit (sub-ACL). This adjustment is intended to help achieve optimum yield, while not threatening an overage of the ACLs for the stocks.

Based on the most current available data, NMFS projects that the scallop fishery will have unused quota in the 2013 fishing year (FY). Although for the first time starting in FY 2013, three Scallop Access Areas will remain open during the month of February, NMFS' analysis assumed similar scallop fleet effort and behavior to past years. It is possible that the additional open areas will increase effort and potentially result in higher yellowtail flounder bycatch. However, NMFS accounted for this uncertainty by using the high-end estimates of the catch projections. As of January 15, the projections indicate that the scallop fishery is expected to catch 41.5 mt of GB yellowtail, or 49.8 percent of its FY 2013 sub-ACL, and 43.6 mt of SNE/MA yellowtail, or 71.4 percent of its FY 2013 sub-ACL. Because the scallop fishery is not expected to catch its entire allocation of GB and SNE/MA yellowtail flounder, this rule transfers the unused quota for the remainder of the 2013 FY of GB and SNE/MA yellowtail flounder from the Atlantic scallop fishery to the NE multispecies fishery. The intent is to provide additional harvest opportunity to the NE multispecies fishery while ensuring sufficient amounts of GB and SNE/MA yellowtail flounder are available for the scallop fishery.

Based on the new projections of GB and SNE/MA yellowtail flounder catch by the scallop fishery, effective [Insert date of filing for public inspection at the Office of the Federal Register], through April 30, 2014, NMFS reduces the scallop sub-ACL for both stocks to the amount projected to be caught, and increases the groundfish sub-ACLs. To account for uncertainty in inseason catch projections, NMFS increases the groundfish sub-ACLs by 90 percent of the amount reduced from the scallop sub-ACLs. This results in an additional 37.7 mt of GB yellowtail flounder, and 15.7 mt of SNE/MA yellowtail flounder, for the groundfish fishery. Table 1 summarizes the revisions to the FY 2013 sub-ACLs, and Table 2 shows the revised allocations for the NE multispecies fishery as allocated between the sectors and common pool based on final sector membership for FY 2013.

Table 1. Georges Bank and Southern New England/Mid-Atlantic Yellowtail Flounder Sub-ACLs (in metric tons)

Stock	Fishery	Initial sub-ACL (mt)	Revised sub-ACL (mt)	Percent change
GB Yellowtail Flounder	Groundfish	116.8	154.5	+32%
	Scallop	83.4	41.5	-50%
SNE/MA Yellowtail Flounder	Groundfish	570	585.7	+3%
	Scallop	61	43.6	-29%

Table 2. Allocations for Sectors and the Common Pool (in pounds)

Stock	GB Yellowtail Flounder		SNE/MA Yellowtail Flounder	
	Original	Revised	Original	Revised
Fixed Gear Sector	32	42	3,820	3,926
Maine Coast Community Sector	9	12	8,321	8,550
Maine Permit Bank	35	47	401	412
New Hampshire Permit Bank	0	0	0	0
Northeast Coast Communities Sector	2,161	2,859	9,115	9,366
Northeast Fishery Sector II	5,037	6,662	18,921	19,442
Northeast Fishery Sector III	25	33	4,482	4,605
Northeast Fishery Sector IV	5,567	7,364	28,512	29,298
Northeast Fishery Sector V	4,151	5,491	288,809	296,764
Northeast Fishery Sector VI	6,954	9,198	64,929	66,717
Northeast Fishery Sector VII	29,083	38,470	57,417	58,999
Northeast Fishery Sector VIII	28,075	37,137	73,420	75,442

Northeast Fishery Sector IX	68,968	91,230	99,983	102,737
Northeast Fishery Sector X	44	58	6,879	7,069
Northeast Fishery Sector XI	2	3	217	223
Northeast Fishery Sector XII	2	3	28	29
Northeast Fishery Sector XIII	64,292	85,044	237,793	244,343
Sustainable Harvest Sector 1	33,971	44,936	103,528	106,379
Sustainable Harvest Sector 3	6,005	7,943	39,363	40,448
All Sectors Combined	254,414	336,532	1,045,939	1,074,748
Common Pool	3,086	4,083	210,696	216,500

Note: All ACE values for sectors outlined in Table 3 assume that each sector permit is valid for FY 2012.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that the management measures implemented in this final rule are necessary for the conservation and management of the NE multispecies fishery and consistent with the Magnuson-Stevens Act, and other applicable law.

This action is authorized by 50 CFR part 648 and is exempt from review under Executive Order 12866.

The NMFS Assistant Administrator finds good cause pursuant to 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment for this in season sub-ACL adjustment because notice and comment would be impracticable and contrary to the public interest. The regulations at § 648.90(a)(4)(iii)(C) grant the RA authority to reduce the scallop fishery sub-ACL to the amount projected to be caught, and increase the groundfish sub-ACL by 90 percent of the amount reduced from the scallop sub-ACLs in order to maximize the GB and SNE/MA yellowtail flounder yield. The updated projections of GB and SNE/MA yellowtail flounder catch in the scallop fishery only became available on January 15, 2014, therefore NMFS could not have taken this action earlier. In addition, the current fishing year ends on April 30,

2014. If NMFS allowed for the time necessary to provide for prior notice and comment, the resulting delay in the sub-ACL adjustments could prevent in the short-term NE multispecies vessels from fully harvesting GB and SNE/MA yellowtail flounder catch at higher rates and potentially prevent the full harvest of the sub-ACLs of other groundfish stocks that are caught coincidentally with GB and SNE/MA yellowtail flounder before the end of the fishing year on April 30, 2014. Given the significant decreases in catch limits for many groundfish stocks in FY 2013, any delay in increasing such limits through this transfer could prevent fishermen from attempting to offset their current negative economic circumstances. Giving effect to this rule as soon as possible will provide immediate relief to fishermen.

The NMFS Assistant Administrator also finds good cause pursuant to 5 U.S.C. 553(d)(3) to waive the 30-day delay in effectiveness for this action for these same reasons. This rule provides additional harvest opportunity to the NE multispecies fishery while ensuring sufficient amounts of GB and SNE/MA yellowtail flounder are available for the scallop fishery. A delay in the sub-ACL adjustments could prevent in the short-term, given the end of the fishing year on April 30, 2014, NE multispecies vessels from fully harvesting GB and SNE/MA yellowtail flounder catch at higher rates and potentially prevent the full harvest of the sub-ACLs of other groundfish stocks that are caught coincidentally with GB and SNE/MA yellowtail flounder. Further, there is no need to allow the industry additional time to adjust to this rule because it does not require any compliance or other action on the part of individual scallop or groundfish fishermen.

Because notice and opportunity for comment are not required pursuant to 5 USC 553 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 USC 601 et seq.)

are inapplicable. Therefore, a regulatory flexibility analysis is not required and one has not been prepared.

Authority: 16 U.S.C. 1801 et seq.

Dated: February 19, 2014

Samuel D. Rauch, III

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

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